

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MAURICE GALLION, as Administrator of the Estate
of TRACEY GALLION, SR., and on behalf of and as
natural uncle of TRACEY GALLION, JR., a minor, and
on behalf of all heirs and wrongful death beneficiaries of
TRACEY GALLION, SR., deceased

PLAINTIFF

vs.

CAUSE NO. 3:12cv736-DPJ-FKB
CONSOLIDATED CAUSE NO. 3:14cv139-DPJ-FKB

HINDS COUNTY, MISSISSIPPI, et al

DEFENDANTS

AFFIDAVIT OF THOMAS D. FOWLKES, M.D.

STATE OF MISSISSIPPI
COUNTY OF LAFAYETTE


COMES NOW, Thomas D. Fowlkes, M.D., Affiant, and first being duly sworn hereby
does state upon first-hand, personal knowledge and under oath, as follows:

The documents attached hereto are true and correct copies of my opinions that I
intent to present as testimony in the matter of *MAURICE GALLION, as Administrator of the
Estate of TRACEY GALLION, SR., and on behalf of and as natural uncle of TRACEY GALLION,
JR., a minor, and on behalf of all heirs and wrongful death beneficiaries of TRACEY GALLION,
SR., deceased vs. Hinds County, Mississippi, et al*, United States District Court, Southern
District of Mississippi, Northern Division, bearing Cause No. 3:12cv736-DPJ-FKB;
Consolidated Cause No. 3:14cv139-DPJ-FKB.

Affiant further sayeth naught.

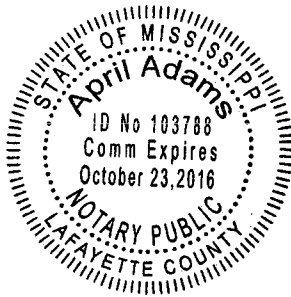
Thomas D. Fowlkes, M.D.
Thomas D. Fowlkes, M.D.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 20 day of February, 2015.



NOTARY PUBLIC

My Commission Expires: 10/23/2016
61305939.1



Thomas Fowlkes, MD, PA
Medical Clinic

1914 University Avenue • P.O. Box 1955
Oxford, MS 38655

Tom Fowlkes, MD

Phone: 662-234-7601 • Fax: 662-234-8531

Jason Melton, FNP

September 22, 2014

Mr. Jason E. Dare
Wyatt, Tarrant & Combs, LLP
4450 Old Canton Road, Ste. 210
Jackson, MS 39211

Re: Gallion v. Hinds County

Dear Mr. Dare:

This report outlines my initial assessment and opinions regarding the medical care and jail detention of Mr. Tracey Gallion, Sr. who died at CMMC in Jackson, MS, following an incarceration at the Hinds County Detention Center (HCDC) in Raymond, Mississippi.

I have reviewed:

1. Complaint
2. HCDC Inmate Records (HC-Gallion 0001 – 0637)
3. HCDC Medical Records (HC – Gallion 0638 – 0805)
4. HCDC Policies & Procedures (HC-Gallion 0806 – 0876)
5. HCDC Officer Incident Reports (HC-Gallion 0877 – 0881)
6. CMMC Medical Records (HC-Gallion 0991 – 1867)
7. Deposition of Sheriff Tyrone Lewis
8. Deposition of Ruth Wyatt
9. Deposition of Stanley Thurman
10. Deposition of Mary Gainwell
11. MS State Medical Examiner's Autopsy Report
12. Death Certificate

My curriculum vitae and expert testimony list is attached. I am Board Certified in Emergency Medicine and Addiction Medicine. For the past 20 years, I have practiced Emergency Medicine in a variety of emergency departments and clinics in the Mid-South. For the past 15 years, I have also provided medical care at the Lafayette County Detention Center. As a result, I have experience in jail policies and procedures, medical care in a jail setting, as well as care in the emergency department and hospital.

Findings/Opinion From Review of Records

Factual Summary

Mr. Gallion was a 28 year old male who was arrested initially using an assumed name on March 10, 2012. (HC-Gallion 0522) Shortly after arrival at HCDC his true identity was determined and he was booked using his real name on charges of violation of probation, expired driver's license, tint violation, possession of marijuana, and false pretenses. (HC-Gallion 0517). A medical intake was performed by officer Walter Williams on March 10, 2012, at 3:18 pm (HC-Gallion 0519). At that time, Mr. Gallion denied having any medical problems or taking any medicines and specially denied asthma or allergies. He signed two forms certifying that the answers given to the medical questions were true and correct. (The form has typewritten under 'Medical Needs': "Subject states he has vericos (sic) veins (sic) lower left leg" but that statement was just being carried over from prior jail intake reports going back several years.)

Gallion did not have any problems at HCDC until the evening of April 5, 2012, at or around 9:00 pm. (HC-Gallion 0639 – 0643; 0877). At that time, the medical department was advised of a "man down" in C-pod, and Nurse Travis Williams and Medical Officer Shawanda Owens responded to find Gallion on the floor and complaining of trouble breathing. *Id.* The medical staff believed that Gallion was hyperventilating and/or was out of breath, and accordingly, allowed him to stay in the hallway outside of the pod area in order to catch his breath. *Id.* Once his shortness of breath subsided and Gallion stated that he felt better, he was escorted back to the pod area. *Id.*

Approximately 15 minutes later, there was another call about a "man down" from Lt. Thurman in the C-pod area, and this time, Medical Officer Maryan Hayes responded. *Id.* She found Gallion in the pod area surrounded by other inmates who were fanning Gallion in an attempt to cool him off. *Id.* Gallion again complained that he was short of breath, and was escorted to the medical department for further treatment. *Id.* While in the medical department at the HCDC, Gallion was seen by medical personnel Williams, Owens and Hayes, and received a nebulized breathing treatment for his complaints of shortness of breath. *Id.* He remained in the medical department until he was stable and stated he felt better. He stated that the breathing treatment "helped a lot". *Id.* At that time, he was escorted back to his cell and was given an appointment to see the physician the next morning. *Id.*

On April 6, 2012, at 9:32 am, Gallion was seen by Dr. Lawrence Sutton in the medical department for complaints of "no appetite, bronchitis & a cold." (HC-Gallion 0645). Dr. Sutton's assessment was that Gallion had bronchitis, abdominal pain, nausea / vomiting and mild dehydration. *Id.* Dr. Sutton ordered Mr. Gallion transported to CMMC ER via transport van at 9:50 a.m. for further evaluation. *Id.* Gallion was transferred to CMMC ER arriving at 10:29 a.m. (HC-Gallion 1135).

The triage assessment was performed at CMMC at 10:35 am. Pt was assigned an acuity level of ESI 3 (level 3 on a 5-level scale with level 1 being "Life-threatening" and level 2 being "Should Not Wait"). The nursing assessment reads as follows:

General: Appears distressed, Behavior is anxious, appropriate for age, Denies. Pain: Complains of pain in chest and abdomen Pain does not radiate. Pain currently is 10 out of 10 on a pain scale. Quality of pain is described as tightness, Pain began 1 day ago. . . . Respiratory: Reports shortness of breath at rest cough that is Onset: The symptoms / episode began occurred yesterday, the patient has moderate

shortness of breath. Respiratory: Airway is patent Trachea midline Breath sounds are clear bilaterally. GI: Bowel sounds present x4 quads. Reports upper abdominal pain, nausea. . . . (HC-Gallion 1144-1145).

The Emergency Room doctor, Dr. David Dean, saw the patient at least by 10:49 a.m. and he notes that the patient's symptoms are "At their worst the symptoms were moderate in the emergency department the symptoms were unchanged". On his exam of Mr. Gallion, Dr. Dean writes that the patient is "in no acute distress" and "the patient does not display signs of respiratory distress" with "Breath sounds: rales, that are mild, are located in both bases. (HC-Gallion 1135-1137)

Dr. Dean orders Mr. Gallion to have testing, including labs, x-ray and EKG. The only treatment provided while waiting on the testing to be completed is one bag of IV fluid, oxygen and one nebulized breathing treatment (same medicine as given the night before at HCDC).

More than two hours after Mr. Gallion's arrival at CMMC ER, at 12:30 p.m., a re-assessment says "remains unchanged at this time". (HC-Gallion 1148) Shortly thereafter at 12:36p.m., he has a heart rate of 109, blood pressure of 122/88 and oxygen saturation of 95%. (HC-Gallion 1387) He is disconnected from the automated vital sign monitoring and is taken to the CT scan department. At 12:42 he is moved back from CT without the test being done and at 12:45 p.m. Mr. Gallion is described as "Appears agitated. Pt complaining of being hot, diaphoretic, unable to sit still". The ER doctor is called and shortly thereafter, "pt went unresponsive, no pulse detected, no respirations. CPR started, code 99 called". (HC-Gallion 1148).

Mr. Gallion was then intubated and a prolonged resuscitation ensued. He was given the thrombolytic ("clot-buster") Activase (tPA) at 1:05 p.m. for presumed massive pulmonary embolus. His heart was eventually restarted and he was admitted to the ICU on a ventilator and multiple medications under the care of Dr. Ramzi Vareldzis at 3:58 p.m. (HC-Gallion 1150-1152)

Dr. Vareldzis, in his History and Physical dictated at 3:10 p.m. that same day while the pt is still in the ER, lists the reason for admission as "Massive pulmonary embolus with cardiopulmonary arrest". He says that while in the ER, he "suddenly had a cardiopulmonary arrest" and "Pt was started on tPA for presumptive massive pulmonary embolus". He also notes that they were not able to confirm this diagnosis because the needed test "was not done due to a malfunction in the system." (HC-Gallion 1109)

Gallion remained at CMMC through April 23, 2012, at which time he was pronounced dead. Cause of death on the medical examiner's autopsy report is listed as: complications of pulmonary thromboembolism.

A review of volumes of HCDC jail and medical records and past CMMC medical records also shows:

- Mr. Gallion had been previously incarcerated every year prior to 2012 starting in 1999 (HC-Gallion 0507-0508).
- A history of substance abuse, including cocaine and marijuana, going back to at least age 18
- Left leg with swelling and varicose veins dating to at least age 18. No etiology found in the record.
- At least two episodes of evaluation for deep vein thrombosis (DVT) in that left leg while incarcerated at HCDC, with findings of no DVT.
- Multiple tattoos indicative of gang affiliation

- A prior hospitalization at CMMC while incarcerated at HCDC in 2004 for hepatitis B

Findings/Opinion:

Mr. Gallion denied having any problems on intake to the HCDC for this incarceration. The night before he was taken to the ER, jail staff was notified of patient having trouble breathing. The jail and medical staff responded appropriately. The evaluation and treatment they delivered was reasonable given the patient's symptoms and his response to treatment. The medical staff appropriately scheduled the patient to see the physician the next morning, less than 12 hours after his initial complaint.

On the morning of 4/6/12, the jail physician saw the patient and, based on his vague symptoms, appropriately referred him to the ER for further evaluation. There was no urgency identified by the jail doctor and he appropriately transferred the patient via transport van.

Mr. Gallion arrived at CMMC less than 45 minutes after he was ordered transported there. On initial evaluation at the ER Mr. Gallion was not triaged as an emergency case and, in fact, he remained in the ER for the next two hours with essentially only the same treatment that had been given by the jail medical staff the night before.

More than two hours after arrival at the ER, Mr. Gallion suddenly had a worsening of his condition and rapidly collapsed with a cessation of breathing and heart beat. Given this presentation and the subsequent autopsy results, it is my opinion that to a reasonable degree of medical certainty, Mr. Gallion had a very large blood clot which had developed undetected in his enlarged left leg. This large blood clot then broke free while he was in the ER being moved to x-ray, traveled up to his heart and lungs, and caused an almost immediate collapse and cessation of breathing and heart beat.

This sequence of events was not recognized or anticipated by any of the medical personnel who had been involved in his care up to that point, including the medical personnel at CMMC, because the symptoms of massive pulmonary embolus were not present. Mr. Gallion displayed only non-specific symptoms and each of the medical personnel appropriately recognized and responded to those non-specific symptoms. The symptoms which Mr. Gallion had were not indicative of a medical emergency up until the time he collapsed in the ER.

It is also my opinion to a reasonable degree of medical certainty that this event could not have been foreseen and would have been immediately fatal at the time it occurred. However, because Mr. Gallion was at CMMC at the time it occurred and was quickly given tPA to break up the clot then, during the prolonged resuscitation, the clot was broken up into smaller pieces allowing his circulation to be restored. Unfortunately, by the time the clot was broken up, irreversible damage to Mr. Gallion's brain and other organs had occurred and ultimately resulted in his death.

I reserve my right to supplement my opinions, or to amend them as necessary, upon review of additional records, deposition testimony, trial testimony or expert reports.

Respectfully submitted,

Thomas D. Fowlkes, M.D.

Thomas D. Fowlkes, M.D.

Thomas D. Fowlkes, M.D.

P.O. Box 1955
Oxford, MS 38655-1955
Cell: 662-801-7508
Office: 662-234-7601
Fax: 662-234-8531
tom@drfowlkes.com

EDUCATION

University of the South
Sewanee, TN
1980-1982
Phi Delta Theta Fraternity
Volunteer Firefighter and EMT

Rhodes College
Memphis, TN
B.S. 1985

University of Tennessee Medical School
Memphis, TN
M.D. 1989
Faculty Medal for Highest GPA

University of Pittsburgh Residency in Emergency Medicine
Pittsburgh, PA
1989-1992
Selected Chief Resident-1992

PROFESSIONAL EXPERIENCE

June 2011- Present	Co-owner and Chief Medical Officer of The Oxford Centre, Inc. a residential and outpatient substance abuse treatment provider
Sept. 2009- Present	Owner of Thomas Fowlkes, M.D. Medical Clinic in Oxford, MS. Provide primary and urgent care and an office-based addiction medicine practice.
1992-Present	Sole shareholder of Thomas D. Fowlkes, M.D., P.A. Contractor of emergency physician services to acute care facilities and emergency medicine/EMS consultant. Operates correctional medical facility at Lafayette County, MS Detention Center. Conducts court ordered mental health, substance abuse and competency evaluations for Chancery Court in Lafayette County.
Nov. 2011- Present	Medical Director for Detox Services at Tupelo CSU for Region IV Community Mental Health Center (Part-time)

Thomas D. Fowlkes, M.D.

PROFESSIONAL EXPERIENCE (cont.)

2008-2011	Part-time provision of addiction physician services to detox unit at Haven House, substance abuse treatment facility in Oxford, MS operated by Region II CMHC
2005-2009	Employed by Tunica County, MS staffing an acute care clinic serving the casinos in Robinsonville, MS and as a part-time staff physician at the Harrah's Employee Health & Wellness Center in Robinsonville, MS
Jan. 1998-April 2001	Private practice of Emergency Medicine with Oxford Emergency Group, P.A. Provides emergency physician services to Baptist Memorial Hospital-North Miss. and Tri-Lakes Medical Center.
Aug. 1997-Sept. 1998	Chief Medical Officer for Rural-Metro Corporation's Mid-South region. Rural-Metro is a publicly traded company based in Scottsdale, Arizona that provides ambulance services and fire protection throughout the United States and internationally.
Jan. 1995-Aug. 1997	Chief Medical Officer, secretary/treasurer and co-owner of Priority EMS, an ambulance provider in north Mississippi and metropolitan Memphis. Corporation merged with Rural-Metro Corp., a publicly traded company.
1992-1994	Private practice of Emergency Medicine as shareholder and officer in Mid-South Emergency Physicians, P.C. Provided emergency department services for St. Joseph Hospital in Memphis, TN.

CERTIFICATIONS/AFFILIATIONS

Unrestricted license to practice medicine in Mississippi

Board certified emergency physician (American Board of Emergency Medicine)

Board certified in Addiction Medicine (American Board of Addiction Medicine)

Certified Medical Review Officer for Drug/Alcohol Testing

PERSONAL

Date of Birth: April 8, 1962

Health: Excellent

Thomas D. Fowlkes, M.D.

Expert Testimony List

State of MS v. Joiner
Trial Testimony 2001
Oxford, MS

State of MS v. Dill
Trial Testimony 05/10/06
Oxford, MS

Hausse et al v. Wallace et al
Deposition 02/2007
Tupelo, MS

State of MS v. Grose, Grose, & Jordan
Trial testimony 2008
Lafayette Co. MS Circuit Court

State of MS v. White
Trial testimony 04/20/11
Lafayette Co. MS Circuit Court

In re: Conservatorship of Curtis Mize
Trial Testimony 10/11
Lafayette County Chancery Court

Charlayne G. Lamb v. Michael Todd Smithey
Cause # B-13-08-0299VC
Ongoing
Second District Chancery Court
Batesville, MS

Angela Anderson et al vs. Marshall County MS & BMH-DeSoto Hospital
Deposition 01/09/2014
Case Ongoing
Cause # 3:12-CV-92-MPM-SAA
US Federal District Court-No. Miss

State of Mississippi v. Shawn Hunt
Daubert Hearing Testimony 02/26/14
Cause # CR2013-167SMD
DeSoto County Circuit Court

State of Mississippi v. John Shannon Gillentine
Case Ongoing
Lee County Circuit Court